BRANDEIS AND BRANDEIS

THE REVERSIBLE MIND OF LOUIS D. BRANDEIS "THE PEOPLE'S LAWYER"

AS IT STANDS REVEALED IN HIS PUBLIC UTTERANCES BRIEFS AND CORRESPONDENCE

BRANDEIS
AND
BRANDEIS

Recent hearings before the Senate Committee on Interstate Commerce and the House Judiciary Committee in Washington, have been enlivened by the appearance of Louis D. Brandeis, the Boston attorney, in advocacy of the La Follette-Lenroot anti-trust bill, the paternity of which Mr. Brandeis has acknowledged.

Several of the provisions of the bill are avowedly aimed at the system under which the shoe manufacturers of the United States have for many years obtained the use of shoe machinery and are directed against certain clauses in the leases of the United Shoe Machinery Company by which, in order to lease certain machines, the shoe manufacturer agrees to use them only in connection with certain other machines leased by the Company.

Mr. Brandeis admitted to the House Committee that he appeared as the representative of the Western Alliance of Shoe Manufacturers, which is fighting the United Shoe Machinery Company both in Congress and the federal courts, but he neglected to inform the committee that he had formerly been a director and counsel of the United Shoe Machinery Company for years, during which time there entered his mind no doubt whatever of the propriety and legality of the

United Shoe Machinery Company's policies and methods, in the shaping of which he participated. It remained for former Representative Charles E. Littlefield, as counsel for the United Shoe Machinery Company, to reveal these facts to the committee, through the presentation of documentary evidence. Inasmuch as the Company's methods and policies are the same to-day as then, the reversed mental attitude of Mr. Brandeis is open to but one interpretation.

Mr. Brandeis now says that he resigned from the Company because he disapproved its policies; but his scruples were not so strong as to prevent his holding on to his stock in the Company until July, 1911, nearly five years after his resignation.

Certain illuminating public remarks, briefs and correspondence of Mr. Brandeis are printed in the following pages, preceded by a summary of his record as set forth in a letter which S. W. Winslow, president of the Shoe Machinery Company, addressed to Senator Clapp, Chairman of the Senate Committee on Interstate Commerce.

Fully a month after the exposure of his professional record, Mr. Brandeis, in a letter bearing date of February 24, 1912, addressed to Senator Clapp, Chairman of the Senate Committee on Interstate Commerce, tried to excuse his conduct. This letter, which if reproduced here would increase the size of the present pamphlet by twenty-two pages, is evasive and irrelevant and does not offer a single reasonable excuse for his change of heart. Those who care for it will find an abstract in the newspapers of February 26, 1912. It appears in full in the printed records of the hearings before the Committee on Interstate Commerce, United States Senate.

To this attempted defense Mr. Winslow replied in a second letter to Senator Clapp, dated February 29, 1912, which will be found in full on page 53. From this letter it appears that, in spite of his quickened conscience, Mr. Brandeis continued to act as counsel for the Company and to accept its fees for three years after his resignation as a director and even up to a few months of the time when he appeared as its active assailant in the pay of those who are now trying to bring about its disruption.

S. W. WINSLOW TO SENATOR CLAPP

THE PRESIDENT OF THE UNITED SHOE MACHINERY COMPANY WRITES TO THE CHAIRMAN OF THE SENATE COMMITTEE ON INTERSTATE COMMERCE

BOSTON, MASS., January 19, 1912.

Hon. MOSES E. CLAPP,
Chairman of the Committee on Interstate Commerce,
United States Senate, Washington, D.C.

DEAR SIR: Louis D. Brandeis, in his statement to your committee on December 14, 15, 16, 1911, made certain assertions in regard to the United Shoe Machinery Company and its methods, which, as president of the company, I feel should not remain in the records of the committee without refutation, and to which I desire to reply. I ask your permission, therefore, to submit this letter to the committee, together with certain documents which seem to me to be essential to its proper understanding. These documents include:

1. Remarks of Mr. Brandeis on April 18, 1906, before the joint judiciary committee of the Massachusetts legislature at the hearing on a bill to regulate the sale and leasing of machinery. Accompanying this are the remarks made by Mr. James J. Storrow at the same hearing, to which Mr. Brandeis refers and to which he gives his indorsement.

2. A brief prepared by Mr. Brandeis at the same time.

3. Correspondence between Mr. Brandeis and Mr. Erving Winslow, of Boston, in October, 1906, referring to the United Shoe Machinery Company and its methods.

From these documents anyone either hearing or reading what Mr. Brandeis has recently said in regard to our company will see that he contradicted his own assertions as to similar conditions in 1906.

Mr. Brandeis was a director of the United Shoe Machinery Company from its organization, in February, 1899, until his resignation in December, 1906, nearly eight of the twelve years of the company's existence. Prior to its formation he had been a director in one of its constituent companies, and took an active part in bringing about the consolidation. He made no objection to the creation of the United Shoe Machinery Corporation as a holding company in 1905, and he became a director of the corporation. Up till the day of his resignation and his acceptance of employment by clients who have interests hostile to ours, he never gave any intimation that in his opinion there was any legal or moral wrong either in the organization of the company or in its methods of doing business.

On April 18, 1906, as a director of the company, he appeared before the joint judiciary committee of the Massachusetts legislature to argue against a bill which was aimed at the United Shoe Machinery Company. He made an argument at that time strongly sustaining the company's methods at every point, and supplemented his oral remarks with a written memorandum.

He then declared his belief that the act aimed at prohibiting the company's methods of leasing machinery would be unconstitutional if passed; a belief in which he was sustained by Hon. Richard Olney, once Attorney General of the United States. Mr. Brandeis now says in his address to your committee that in Massachusetts "*we* passed a law making it a criminal offense for a person to make it a condition of a sale that the purchaser must, in order to get a discount, buy exclusively from the seller," and "*our* people had the effrontery to try to protect themselves by legislation and enacted a law making it illegal to put in such a tying clause."

In his present role of an expounder of public morals, he seeks to hold this company up to public contumely because it opposed a law which he had himself denounced publicly as unconstitutional. He submitted an excellent opinion to that

effect, supported by many convincing authorities of the Supreme Court. It was largely by Mr. Brandeis' opinion at that time that the company and its officers were guided in arriving at their conviction of the unconstitutionality of the law.

In his remarks before the committee of the Massachusetts legislature in 1906, Mr. Brandeis argued that the tying clauses in the leases, which he now attacks, were necessary to enable the company to do a large volume of business at a low price, and that the removal of these tying clauses would necessarily result in the ruin of the small manufacturers of shoes. He said:

> "If we do not have this clause in certain of the leases where we have it, we could not sell certain things we do sell; we could not lease certain things which we do lease at as low a price as we do. It is only on account of the volume of this business that we are able to undersell other people."

He then called attention to the fact that "no shoe manufacturer has appeared in favor of this bill, no dealer in shoes, no wearer of shoes. * * * The only people here in favor of it are shoe machinery manufacturers or would-be shoe machinery manufacturers and inventors," and he declared that nobody else could be benefited except the competing machinery companies, with one of which "Mr. H. H. Rogers, of the Standard Oil system, is said to be connected." He might with equal truth make a similar statement with regard to the legislation which he now advocates, for he is at present retained by the Western Alliance of Shoe Manufacturers, consisting of large manufacturers who say they wish to manufacture shoe machinery; and in their behalf he is seeking to remove a formidable competitor.

While he now denounces this company on the ground that it is a monopoly, he declared in 1906:

> "In part it is a legal monopoly of merit absolutely granted, because of the machinery we sell — I mean all that we lease or sell, because some we lease, some we sell, and with some we do both — all of the important machines are patented machines. The Federal law

> means that we shall have a monopoly of those, and nothing in this State can take it away or limit it. We have also a very large part of the business outside of the necessarily patented machines, and why we have it is because we are able to give to the people these machines cheaper than other people, and that is a complaint that is made against this company, that we are giving them cheaper; that is the main complaint."

He then argued that it would not be advantageous to shoe manufacturers or the public to have competition in shoe machinery. "What is true in a great many branches of manufacturing," he said, "is in no respect true in regard to this. You cannot have that free competition — I mean as a practical matter — because it is only by reason of the royalty which we receive on our main machines that we can sell these other machines cheap." He even went to the length of classing shoe machinery with public utilities as a necessary monopoly. He said:

> "We have found in Massachusetts that in certain things we have got to have a monopoly. We have to have a monopoly in electric lights; we have to have a monopoly in gas, and we have to have a monopoly in telephones, and this business stands more even than some of the others just on that basis."

He then told the committee "just why" this should be the case. He pointed out that the business of shoe machinery manufacturing is an "extremely extensive, complicated business," and that there are in the manufacture of every pair of shoes a large number of distinct operations amounting in some instances to "nearly 300 operations in the manufacture of a single shoe," and for "the purpose of these operations there are a large number of independent machines which have to work in harmony."

He emphasized the service of the company in employing men whose sole business it was to get out to see that the machines were kept in order. These roadmen, he said, were one of a shoe machinery company's greatest expenses "because whether he (i. e. the shoe manufacturer) had few or many machines, we had to have these men all accessible when the

shoe manufacturer was in trouble;" and this is "a service which is rendered free; it has to be rendered promptly; it has to be rendered quickly and on the spot." That was the reason, he asserted, why the United company had this great advantage on its machinery.

He then declared that nobody could possibly say that the company was selling things too dear or leasing things too dear, because "when the cost in every branch of shoe manufacture has gone up from 33 to 50 per cent. over every other department, it has actually gone down in ours," and he declared that the company was able to do this and still make a good profit "because of the extraordinarily able management of this company, and because of the fact that we are doing things wholesale."

He then declared that the company was entitled to commendation because "it is the greatest promoter of competition that there is," and there was not a manufacturing business in the United States in which there was the same freedom of competition that there was in the shoe manufacturing business. He said:

> "That happy result is largely due to the methods employed by this shoe machinery company and the predecessor companies combined together to form this company. I deem it to be the fundamental or most important fact existing in business that the smallest man who makes 50 or 100 pairs of shoes a day has just as great advantages as the man who makes 20,000 pairs of shoes a day."

He thus declared his belief in the leasing system:

> "I say it is the best thing that can happen to the shoe manufacturer, because he is able to get on in business. He is able to engage in it without sinking his capital. The little man gets the new improvements just as the big man gets them, and some of the men who are doing a large business thought it was very unfair because they can buy their leather cheaper, because their credit was better, because they could buy a million dollars' worth at a time, and the only thing in the whole business they cannot buy cheaper was their shoe machinery or shoe machinery material."

I have analyzed the arguments which Mr. Brandeis presented with so much force in 1906, because they apply with equal force to the situation to-day. The policy of the United Shoe Machinery Company has not changed. Its organization, principles, and methods of doing business are the same as those with which Mr. Brandeis was entirely satisfied during the time he was a director of the company and when he argued in support of them before the committee of the Massachusetts legislature, at the same time advising his personal friends that they were not only legal and moral but economically necessary and beneficial.

Only one thing has happened since 1906 to explain his change of mind. He has been retained by the Western Alliance of Shoe Manufacturers, organized at the instigation of large manufacturers in St. Louis, who, after trying unsuccessfully to force special rates from the United Shoe Machinery Company to the disadvantage of small manufacturers, are now attacking the company through various channels.

In 1910, after Thomas G. Plant had failed in his negotiations with large shoe manufacturers, the United Shoe Machinery Company bought his shoe machinery patents.

With regard to that transaction, Mr. Brandeis, speaking as the counsel of the Western Manufacturers' Alliance, has made statements to your committee which are grossly inaccurate and wilfully untrue. Before commenting on those statements, I feel that the committee should be made acquainted with the fact that Mr. Brandeis continued to be a stockholder of the United Shoe Machinery Corporation for nearly a year after the purchase of the Plant patents, and did not dispose of his holdings until after he had been retained by the Shoe Manufacturers' Alliance and after his clients had taken measures to bring about the prosecution of the company, the announcement of which would be likely to lower the value of his stock.

Mr. Brandeis' reference to the Plant transactions appears on the following pages of the printed testimony before your committee, 1161, 1188, 1189, 1190, and 1258.

First, as to the purchase from Mr. Plant. This transaction should be clearly understood by everyone. Plant's patents

were on the market, and the United company bought them after a thorough examination by its experts. The price which the company paid was based upon a careful valuation of certain of Mr. Plant's inventions, which in their then existing form could not have been utilized to the best advantage by the trade; but which when combined with inventions owned by the United company and incorporated in its machines will advance the art of shoemaking so materially as to leave no question in the mind of anyone that all parties, including the shoe manufacturers, operatives on machines, and the wearers of shoes have been benefited.

It should be clearly understood that neither Mr. Plant nor the United company could separately have given to the trade as good machines as it is now possible for the trade to have. The United company has been at work ever since the purchase, in September, 1910, in embodying these inventions in its machines.

It has been necessary to devote a great deal of time and spend a large amount of money in the mechanical perfection of such improvements as he had made, and the trade will have the benefit of these improvements embodied in machines of the United company, and it has never been the intention of the company to charge any additional royalty, or make any additional charges of any kind, for their use.

As a matter of fact, never to my knowledge did Mr. Plant offer any shoe machinery or patents on shoe machinery to the trade, and he never had any for sale. He always kept himself free to sell out as a whole and frequently expressed himself as determined to remain so.

Mr. Brandeis' statements are largely matters of argument and statements of law which will be met at the proper time, but I have been unwilling to leave unanswered certain specific statements made by Mr. Brandeis, which not only have no foundation in fact, but are so completely without any such basis that I am surprised that Mr. Brandeis should have made them. He makes the following statement: (Page 1188.)

> "As an instance of this take the shoe machinery trust, which finally put an end to the open competi-

tion by the Plant concern. It did not accomplish that by commercial means. It was accomplished through their control of the money market. Mr. Plant found closed to him those avenues of credit which he had previously enjoyed and which he was entitled to."

Again, on page 1189, Mr. Brandeis says:

"You know how he happened to sell out his business to the shoe machinery trust. Mr. Plant was driven to the position where the next day he had to meet perhaps half a million dollars of obligations and simply could not get any money. He had been driven to the last ditch. He had been trying to raise some money through an arrangement with Western manufacturers. They were in Boston for that purpose. They were not quite ready to agree to advance the large sum of money needed. It was necessary to have about a million dollars to meet the situation. He left these Western manufacturers about 8 o'clock. Failure to meet his obligations stared Mr. Plant in the face."

Again, on page 1258, Senator Gore is reported as having asked the following question:

"They (referring to United Shoe Machinery Company) put Mr. Plant out of business?"

"Mr. BRANDEIS. Yes."

I wish to say that the United Shoe Machinery Company not only now but never had any "control of the money market" or any such power as Mr. Brandeis credits it with, and that the United Shoe Machinery Company, or anyone connected with it, never did anything to injure Mr. Plant's credit at the bank or to in any way affect banks in regard to Mr. Plant.

I have no knowledge as to whether Mr. Plant had, as Mr. Brandeis states, borrowed all the money he could borrow and was about to fail to meet his obligations, but I can say if he was in any such situation on the day that he sold to us we were not made aware of it. All the United Shoe Machinery Company ever knew in regard to Mr. Plant's financial situation was that from time to time we would hear gossip, or be told by various people who were trying to persuade us to buy

out Plant, that Mr. Plant owed a great deal of money. All the gossip we heard was common gossip. Mr. Brandeis says, page 1189:

> "After he had demonstrated the success of it and gotten the certificate of approval from some of the best manufacturers of the country, East and West, his credit was cut off absolutely.
>
> "Men who were disposed to give him credit after a few days withdrew."

This is the first time we have ever heard this statement. If it is true, all I can say is that the United Shoe Machinery Company had nothing whatever to do with this result.

This and Mr. Brandeis' other statements about the financial position of the United Shoe Machinery Company are absolutely without foundation. We have attended strictly to our own business and never interfered with the credit of Mr. Plant or anyone else.

But Mr. Brandeis makes one statement which is somewhat specific and as to which if he has any proof to support him we should be very glad to have him submit it. He says (page 1189):

> "Nobody can prove conclusively why credit was denied. It is a matter of judgment, and in this particular instance I have very good evidence—absolutely reliable in my judgment — that one of the men who refused Mr. Plant credit thought that his credit was perfectly good and was willing to give him the credit, but was not willing to oppose the important financial interests that intimated to him that they did not want him to have credit."

Now, this is a serious statement for Mr. Brandeis to make. If he has any proof of it, in fairness to everyone, including your committee, he certainly should make his statement definite. He says he has the evidence and that it is reliable. We should be very glad to have him submit it, for neither the United Shoe Machinery Company nor any person or interest connected with it ever intimated to anyone that they did not want Mr. Plant to have credit. Very respectfully yours,

S. W. WINSLOW,
President.

MR. BRANDEIS ON BEACON HILL

HIS ARGUMENT BEFORE THE JOINT JUDICIARY COMMITTEE OF THE MASSACHUSETTS LEGISLATURE IN OPPOSITION TO THE BILL (H. 472) TO REGULATE THE SALE AND THE LEASING OF SHOE MACHINERY, APRIL 18, 1906

Mr. Chairman, I think that nearly everything that Mr. Storrow has said is absolutely correct. He is wrong, in my opinion, in saying that if you pass this act, or if you pass any act like it, you would break up the shoe machinery business. I do not believe that is true, because I believe the act would be unconstitutional, and therefore the passage of the act would not, in my opinion, have that effect if it were contested. He was wrong, as I stated before, in stating that I appear here as counsel for the Shoe Machinery Company. I am one of its counsel, but I am here in the capacity of a director with Mr. Storrow. And I was a director with Mr. Storrow in one of the companies prior to the organization of this company which controlled an important part of this business.

I want, in the first place, before saying the few things I have to say, to answer what I believe was Senator Cox's last question as to the reason why it would not be satisfactory, if our machines are better than any others, to let them be sold without that clause in the contract. Mr. Storrow gave some reasons, perhaps sufficient reasons, but there is one other reason which directly affects the community as well as ourselves. If we do not have this clause in certain of the leases where we have it, we could not sell certain things we do sell, we could not lease certain things which we do lease at as low a price as we do. It is only on account of the volume of business that we are able to undersell other people. When you cut

down that value, when you cut down the amount of business that the agent is going to look after in a particular factory, what we are going to manufacture, it would make it impossible for us to make low prices and make the same profit that we are making. Now, it has already been referred to, the fact that of the four classes of people interested in this Shoe Machinery Company, excepting the officers and stockholders, only one has appeared. No shoe manufacturer has appeared in favor of this bill, no dealer in shoes, no wearers of shoes, no employees of the company who favor this bill. The only people here appearing in favor of it are shoe machinery manufacturers or would-be shoe machinery manufacturers or inventors. I dare say it is entirely true, as it has been stated, that one of these companies, the Boylston Manufacturing Company, which is a competing shoe machinery manufacturing company, with which Mr. H. H. Rogers of Standard Oil fame is said to be connected, might possibly be benefited by this, because it would give them an easier way to compete with us. They might be benefited. I do not see that the Commonwealth could be advantaged by that; certainly no one else could be.

It has been said that this is a monopoly. In part it is a legal monopoly absolutely granted, because all the machines that we sell — I mean all that we lease or sell, because some we lease, some we sell and with some we do both — all of the important machines are patented machines. The federal law means that we shall have a monopoly of those, and nothing in this State can take it away or limit it. We have also a very large part of the business outside of the necessarily patented machines and why we have it is because we are able to give to the people those machines cheaper than other people. And that is a complaint that is made against this company, that we are giving them cheaper; that is the main complaint.

The terms that these gentlemen say are in the leases are not in the leases, taken down as they say. It is not true that if you take one of our leases you cannot use any other machine. That is not true. Take the manufacturer of the Goodyear turn shoes, which Mr. Storrow spoke about, where he said there were 96 machines used, that we make, that we lease, or some of them that we sell. You would suppose from statements

that have been made if a man took any of those machines, he had to take them all. That is absolutely untrue.

Mr. Storrow. The number that you state is too large, I think.

Mr. Brandeis. Well, whatever the number is that is used in making those Goodyear turn shoes. There are 55 of those machines a man can buy from anybody, nothing in our lease, nothing in the patent that prevents their getting them. If they get them from us, they get them from us only because we are willing to give them those machines or lease them those machines at prices which are better than they can buy them at, provided they will use them only in connection with some other machine which we are leasing. That is a wholly optional thing with those people. They can get them from others, but they can get them from us cheaper if they are willing to use some other machine. There are certain important machines, patented machines, which we have and which we lease and lease upon terms which we believe to be fair and which are profitable.

Reference has been made to the added position of the shoe manufacturer. As I have said, as a director in this shoe machinery manufacturing company, I have a slight interest in this thing. I have an infinitely greater interest in the shoe manufacturing business as counsel for a large number of shoe manufacturers, than I have in this company, an infinitely greater interest. I do not believe that any of my clients who are shoe manufacturers, or any of anybody's else clients who are shoe manufacturers, come here. Why? Because while this company does control shoe manufacturing machines, it is the greatest promoter of competition that there is. I have some knowledge of the general manufacturing business, which I have acquired, of course, and some practical, and I venture to say there is not a manufacturing business in the United States, unless it be the clothing manufacturing business, which we fortunately have not much of in Massachusetts, there is not a manufacturing business in which there is the same freedom of competition that there is in the shoe manufacturing business; and that happy result is due largely to the methods adopted by this Shoe Machinery Company and the predecessor

companies combined together to form this company; and the systems to-day are not very materially different from what they were in the predecessor companies. Why is it? It is, in the first place, what Mr. Storrow has said to you, what I deem to be the fundamental or most important fact existing in business, that the smallest man who makes 50 or 100 pairs of shoes a day has just as great advantage as the man who makes 20,000 pairs of shoes a day; and I am very familiar with the business of two manufacturers who do that.

REP. PHELAN. If you will excuse me, if that is so of the shoe business, why is it not true of the shoe machinery business?

MR. BRANDEIS. If what is so?

REP. PHELAN. I understood you to say that it was a great advantage that the smallest shoe manufacturer should have just the same rights as the very largest.

MR. BRANDEIS. He should.

REP. PHELAN. And that he should have the same freedom of competition?

MR. BRANDEIS. If you could do it, it would be an admirable thing to have competition, but you cannot do it.

REP. PHELAN. Would not it be true also of the shoe machinery business?

MR. BRANDEIS. No, and I will tell you why not. I think I can tell you just why. This business of shoe machinery manufacturing is an extremely extensive, complicated business. There are in the manufacture of every pair of shoes — I have forgotten the different kinds of shoes — a large number of distinct operations, for which in the labor scale, as it were, payments are made. Those operations in the manufacture of some shoes reach nearly 300 operations in the manufacture of a single shoe. For the purpose of those operations there are a large number of absolutely independent machines which have to work in harmony, and which are in no way connected as a series machine, that is, of one single machine. Now, to work out that system requires in itself a comprehensive situation. Before this company was organized there were three companies that were large companies; one dealing with this Goodyear shoe machinery, one dealing with the metallic, which had to do with putting in metallic cases, and the nailing

of the shoes, and the other dealt with the lasts. Those companies found that for the proper conduct of the business it was desirable that the business should not be confined to any particular department, but that it should include a large number of departments, that there was an immense amount of expense and an immense amount of friction which necessarily resulted from any division in regard to a large part of this machinery. Take this matter that Mr. Storrow spoke of in regard to these men. We have in Massachusetts 343 shoe manufacturers with whom this company is dealing. We have to-day 262 men whose sole business is going out to those companies and seeing that the machines, which are constantly getting out of order, are put in order, helping on the new machines introduced, the improvements and one thing and another, or teaching those men who run them. Now, I was in one of the companies before Mr. Storrow and I were together in the McKay Company, and I represented as counsel an interest in still another company, and we found that these roadmen, as we called them, whom we had to have out at the factory, were one of the greatest expenses we had, because whether we had few or many machines, we had to have those men out, because if we did not have them all accessible, the shoe manufacturer was in trouble. This is a service which is rendered free, it has to be rendered promptly, it has to be rendered quickly and on the spot. That is the reason why, and it was so stated in some of the testimony, the reason why this company has this great advantage on machinery which is not patented at all, over several of the gentlemen who appeared before another committee and talked about this, is because by their business organization and the fact of their putting out machines wholesale, though at a great deal of possible expense they are ready to put these men into the factories to see that the machines are there, and to see that they run properly. Then, again, it is absolutely essential that there should be constant development and that we should be able to introduce new machines or to apply to those outstanding the improvements which are made. And those improvements are very numerous.

For instance, the number of patents which have been used

by this company, or which are now pending and which we expect to obtain, in these nine years is over 1,000. Now, it is said that the inventor has no chance. It is absolutely untrue. Although we have now 35 men who are working all the time on nothing else except attempting to improve our machines, and the concern has spent $150,000 a year in attempts to improve its machines, I mean not in manufacturing, but this is an experimental expense, a patent expense, an inventor's expense, — although that is true we have bought more patents from other inventors in these years than we have developed in our own establishment with all that expense. We have probably spent during this period $1,000,000 in improvements and inventions on this machinery, and yet we have bought from others more patents than we have developed ourselves.

Now, what is true in a great many branches of manufacturing is in no respect true in regard to this. You cannot have that free competition, I mean as a practical matter, because it is only by reason of the royalty which we receive on our main machines that we can sell these other machines cheap. That is my point. The objection against us — there is not any important objection against us; nobody can possibly say we are selling things too dear or leasing things too dear, because, as Mr. Storrow said, in the last seven years, when the cost in every branch of shoe manufacture has gone up from 33 to 50 per cent. over every other department, it has actually gone down in ours. That is true not only that it has gone down because no royalty has been raised, but no royalty on material has been raised. Just see what that means. In all of these metallic fasteners there is brass or steel. Now, everybody here knows, and it is a matter of common knowledge, that copper has gone up, it has almost doubled in price in the last seven or eight or nine years. Copper was selling at nine cents and is selling now at 17 cents. Now, although copper has gone up to that extent, and although steel has been going up — and those are the two metallic fastenings which we use — although that is the case, the price has not been raised on a single metallic fastening. Labor, of course has gone up, as Mr Storrow's figures showed you.

Now, why are we able to do this and make still a good

profit? Why, it is because of the extraordinarily able management of this company, and because of the fact that we are doing things wholesale. Where the old McKay Company that we were in had to have their roadmen in a factory out in Brockton or Haverhill or Lynn, then the Goodyear Company had another man, and the Lasting Company had another, and, before Mr. Storrow's and my companies came together, the Wire Grip had one man, and the McKay had another — we have one man in that factory; and now I think with 343 factories they have 262 men all the time circulating around about those factories and, as Mr. Storrow expresses it, tuning up the machines, getting them in order and teaching green men how to do their business. One of these men who appeared before the other committee made this objection, that they could not stand it because we made it so easy, and as compared with them we told them how to run the machines. Well, we must plead guilty to that charge. We do it.

As I said before, the big man has no advantage over the smaller man. As a matter of fact, the smaller man has an advantage over the big one, because this little man with one of our machines making 50 or 100 pairs of shoes a day, is entitled to all the attention that the man making 20,000 pairs of shoes a day is entitled to; he does not get but one third or some other fraction of the capacity of the machine, but he has all the advantage of this larger man and the best attention we can give him. It is said that this lease system is a bad system. I say it is the best thing that could happen to the shoe manufacturer, because he is able to get on in this business, he is able to engage in it without sinking his capital. One of the very men that Mr. Storrow spoke of, a man who is now making 20,000 pairs of shoes a day, is a man who within this very period I know of, in the shoe machinery business, had nothing practically, he is absolutely a new man in this short period which I have known. Then there is the other thing: These men are not getting only this machine; they not only do not make any investment, but they get all the improvements. The little man gets the new improvements without paying anything, just as the big man gets them; the big man also gets them. My clients — and I have some

that are doing quite a large business — thought it was very unfair, that they could buy their leather cheaper because their credit was better, because they can buy a million dollars' worth at a time, and the only thing in the whole business they cannot buy cheaper was their shoe machinery or shoe machinery material.

Now, I say, therefore, that this cry against this company is absolutely indiscriminative, because there is talk against monopoly, and there are recognized monopolies which everybody knows. But we have found in Massachusetts that in certain things we have got to have a monopoly. We have to have a monopoly in electric light, we have to have a monopoly in gas, we have to have monopolies in telephones, and this business stands more even than some of the others just on that basis.

But I say constitutionally you cannot do it. These machines are practically patented, all the important ones are, and the decisions of the Supreme Court of the United States, particularly the decision in National Harrow Co. *v.* Bement, in the 186th U. S. Reports, says absolutely that a man who holds a patent can hold it as he pleases. And our own status is just as good. You cannot limit the right to do business except by the requirements of safety, of health or of morals. The O'Keefe *v.* Sullivan case, a recent case in the Supreme Court, establishes this. I think it certainly would be a great stretch of the imagination to say that either the morals, health or safety of the community is threatened every time a man leases his machinery at so low a price that another man cannot compete with him. And that is just what this bill says, that you shall not, in selling or leasing your machinery, offer such inducements that another man cannot compete with you.

THE CHAIRMAN. I am afraid your time has expired, Mr. Brandeis. You started out by saying that this act would be unconstitutional. Do you care to submit any authorities upon that point?

MR. BRANDEIS. Well, if the chairman thinks that is desirable, I would be very glad to do so, but it seems to me that the case of National Harrow Co. *v.* Bement, 186 U. S., settles that question, but I will be very glad to give you a memorandum

of a few authorities. I will send them to you, Mr. Chairman. They seem to me to make it perfectly clear.

THE CHAIRMAN. Mr. Brigham, we will hear you or somebody else until one o'clock.

MR. AUERBACH. Are you going to give me no more time than that? That seems to be pretty short, because I have accumulated a great mass of material upon this subject.

THE CHAIRMAN. I understand the petitioners were given a hearing before another committee.

MR. BRIGHAM. I will give my time to Mr. Auerbach.

THE CHAIRMAN. We will hear you, Mr. Auerbach, until five minutes past one.

T. HART ANDERSON, ESQ. Will the committee accept a written brief from me, representing the Duplessis Company?

THE CHAIRMAN. Surely.

"ABSOLUTELY CORRECT"

ARGUMENT OF JAMES J. STORROW BEFORE THE JOINT JUDICIARY COMMITTEE OF THE MASSACHUSETTS LEGISLATURE, APRIL 18, 1906, TO WHICH MR. BRANDEIS GAVE HIS ENDORSEMENT

Mr. Chairman, I do not appear here as counsel at all for this odious monopoly, as it has been characterized. I am a director of the company, I am one of the 4,500 stockholders. If the company is threatened with any destructive force by the Legislature, it is easy enough for me to sell my stock and get out, I can do it quickly, and I do not apprehend any personal loss from whatever you may do, even if you wreck the company. I do not draw a dollar from the company in the way of salary or from any connection with it, except simply as one of the 4,500 stockholders. But there have been certain allegations made here at this hearing ——

THE CHAIRMAN. How would it wreck your company if we provided for free competition? Are not your patents good enough to allow you to go into the open market?

MR. STORROW. If you will permit me, I will take up that question later. I propose, Mr. Chairman, to give a little sketch, which I think this committee ought to have, in regard to the history of this company and of the boot and shoe business. Mr. Brandeis is here as counsel representing the company, and he ——

MR. BRANDEIS. Not as counsel, but as a director.

MR. STORROW. Mr. Brandeis will take up the question of the leases more particularly. But the point I want to make is that the business of leasing shoe machinery is a somewhat peculiar business. It has not been applied, for instance, to the business of manufacturing cotton cloth. It began before

the War, in about 1860 or 1861, and the entire development of the boot and shoe industry of Massachusetts and of this country has grown up under that system. I suppose there practically is not a man in business to-day in the manufacture of boots and shoes who has not grown up under the leasing system, or in spite of the leasing system, if it be a detriment to his business. As a matter of fact, the leasing system has been, on the whole, a very great advantage, has helped enormously the boot and shoe business of Massachusetts and of this country. The first or second largest shoe manufacturer in this State, the first or second largest payer of rentals to this company, and the largest exporter of shoes in this entire country began his business with a few shoes which he put in a basket and carried out on his arm to sell. From that he has grown to a business which two or three years ago consisted of the manufacture of $5,000,000 worth of shoes and the exportation of $2,000,000 of that $5,000,000 worth, and I know that his business within the last two years has very substantially grown further; I should imagine that to-day he is probably making not less than $6,000,000 and probably $7,000,000 worth of shoes per year. Now, a system under which a manufacturer can start as a poor young man and prosper in that way cannot be altogether bad, it cannot be altogether a millstone around a manufacturer's neck. It is easy enough to pass a law here which in five minutes would wipe out an industry which in forty-six years has been chiefly built up. You can do it, but it is something you ought to think about very carefully and go a great deal deeper into than any investigation that has yet been made or appears from the statements of those in favor of this bill.

This company was really formed in 1899. It was formed under the New Jersey law, because the Massachusetts statutes at that time did not permit a corporation to be formed of this size. It was formed by Massachusetts men who would have preferred to incorporate under the Massachusetts law. It had to be done in a hurry, it was not possible to come here for special legislation, therefore the company was formed under the law of New Jersey in 1899. At that time there were paid out in wages in Massachusetts $786,530, that is,

for the first year. The business has steadily grown, and in this year, taking the first three months as a sample, there will be paid out in wages in the State of Massachusetts in the factories for the manufacture of shoe machinery $2,347,400. That is a very large industry. There are to-day employed in the factories of the company in this Commonwealth 3,345 men, besides 640 more men who are salesmen or work in the offices or are employed in some connection in visiting the factories where the machines are operated. That represents the creative growth of some of the best business men of Massachusetts extending over a period of forty-five years. Certainly I think you will agree with me that so far as that very large wage fund is concerned, the employment of a large body of men highly skilled, at high wages, the State of Massachusetts is not suffering seriously. There is one point that interests me in connection with these wages, and that is that when the company was formed in 1899 the average wage paid to an employee was $632, and it has advanced step by step until to-day it is $701. That is the average wage, as I understand it.

Take the exports of this company, gentlemen. I am only going back to 1902. In 1902, the exports were $537,000 from the State of Massachusetts to foreign countries; in 1903, $631,000; the next year, 1904, $916,000; in 1905, $1,049,000. In the course of three years the exports — not to other States; that is going on to a very large extent — but to foreign countries doubled, or advanced from $500,000 to $1,000,000.

THE CHAIRMAN. Let me interrupt you. You say the exports were what?

MR. STORROW. The exports to foreign countries increased from $537,000 to $1,049,000.

THE CHAIRMAN. What do you do with them when you get them there? Do you have a lease there?

MR. STORROW. Yes, sir, just the same.

I gave just now the history of one manufacturer in this State. The history of another manufacturer who afterwards became Governor of this State, is substantially the same. Those two manufacturers live side by side in the same town, and that is their history. And I could repeat to you, *ad infinitum*, almost, other manufacturers who have not been

ruined, but have gained year by year in prosperity under this system.

What is the system, broadly speaking? The system is this: This company has undertaken to supply Massachusetts manufacturers first, and after that other manufacturers with the best mechanism that can possibly be made to facilitate the manufacture of shoes, in two ways: one is for the economy of the shoe in its production, and the other is the style and quality of the shoe. Have they succeeded? They certainly have. These gentlemen pay us the compliment of saying that the business is practically in our hands. If there is to be discredit attached to it, I think there is also some credit, if the shoe manufacturing business has prospered, it is not fair to say that we are not responsible for a large majority of that success. It is a matter of common knowledge, gentlemen, that the American shoe factory, the Massachusetts factory, under our system has not only been able to export its shoes to every civilized country in the world where shoes are worn, on the question of price, but it is common knowledge that in the style and quality of the work of the machine shoe which has grown up under this odious system is not equalled by any other country in the world. I am not an expert in shoes, I never made a shoe, but I know a little bit about shoes, and I can tell, for example, a pair of English shoes made in an English factory under old English methods of a few years ago almost across the street, and in two minutes I could show you the difference in style and quality between the English shoes as they have been making them in the past and our shoes to-day. It is true that the English shoes are getting closer and closer to ours because this company is exporting its machinery to their manufacturers. The manufacturers, instead of making them under those free conditions suggested are only too glad to accept the machinery of this company, to subscribe to its odious system, and to use these odious machines. That has taken place in England, in France, in Germany, in Switzerland, in all the foreign countries.

This company not only undertook what I believe to be the legitimate business of supplying shoe manufacturers with the best machinery that the brain and hand of man could make,

but it went a step further; it said the shoe manufacturer's business is looking after his employees; he is buying his leather, he is cutting his leather; he is not a mechanic, it is not easy for him if his machine gets out of order, to repair it; it is not natural; he is not a mechanic; that is our business. We are mechanics, that is what we know; we are a special kind of mechanic, we are shoe machinery mechanics. The consequence of that is that this company absolutely relieves its lessees of any trouble or thought in regard to their machinery. If a machine breaks down in a factory, all that the manufacturer has to do is to send or telegraph to the nearest office or send a telephone message, and within the shortest possible time a man comes there and sets that machine in order. In fact, in practice it is not even necessary for him to do that, because the employees of this company are constantly circulating around among the factories, and if there is the slightest symptom of disorder in a machine that employee repairs and tunes it up. Even although the machine may be performing its work satisfactorily, if he sees an operator who is green or new, who does not understand thoroughly the use of the machinery, he goes up to that operator and he tells him how to get the best results out of that machine. It is absolutely true — I make this statement, and no living man can challenge it — that under that system we have developed here in Massachusetts the best shoe machinery in the world, and the best manufacturers in foreign countries, every progressive manufacturer of boots and shoes in foreign countries, wants the machinery that was developed here in Massachusetts under this system, and they are getting it, and this company is exporting it.

The stockholders of this company are about 4,500 in number, and of those 3,000 are citizens of Massachusetts. There is no one enormous magnate who is dominating the situation; there are a great many stockholders, and the board of directors, which I believe consists of nineteen members, represents a great many different holding interests.

I think it is true that a well-administered business, a business which is producing results at constantly decreasing cost, does bear hardly upon competitors in that line of business.

The fact is that you have not had here shoe manufacturers really, representative shoe manufacturers, and there are hundreds of them in the State, and if they were being wronged they would pile in here and fill this room four times over. But you have not had the manufacturers of shoes come in here to protest. It is the competitors of this company in the manufacture of shoe machinery; and I am bound to say that I believe the affairs of this company have been so efficiently and ably managed, with the same ability which has created this machinery, which makes the Massachusetts shoe machinery the standard of the entire world, and the machinery owned by this company — because that is what it amounts to, the standard of the entire world, — has borne hardly and must bear hardly on other manufacturers of shoe machinery in this country. You cannot have your cake and eat it too. If you want to ruin this company, you can do it, you have got the power. The result of that probably would be the starting up of some small other concerns. A further result would be that the machinery would not progress as it has done, that the business of manufacturing shoe machinery would no longer be centred in Massachusetts; it would go to Leicester, England, it would go to Frankfort, Germany, it would go to France, it would go to Montreal, where this Duplessis Company that was spoken of is organized, it would go out to Cincinnati, to other States in this country, and you would dissipate this business to the four winds. It would help, perhaps, some few small shoe machinery manufacturers in this State, but you would not help the manufacturers of shoes.

There is one other general point of view which I wish to lay before your committee, and that is this: It has been the policy of this company since it was formed to absolutely not put the price up on anything. One of the gentlemen here spoke of a 20 per cent advance if a man preferred to buy the company's machinery rather than to sign a lease. He did not get it right. The company is offering substantially all machines that existed when it came into being at the price at which they were then offered. They do offer a discount of 20 per cent in that case, and undoubtedly a bigger discount in other cases for manufacturers who choose not to buy — they can buy as they used

to — who choose not to buy, but who instead of buying pay so much per pair of shoes for the use of the machines and for the constant tuning up, the constant watchfulness, the constant traveling around and care by machinery experts, which is a very essential part of the company's usefulness. I defy anyone to come in here and show you that this company has put up the price on shoe machinery, and I can satisfy you that all along the line the policy of the company has been to reduce the cost of boot and shoe machinery. For example, in 1899, a set of Goodyear machinery, which makes the kind of sewed shoes which probably every one of you gentlemen has on his feet, which is the kind that imitates the old hand method exactly, but the original sewed shoe was made in an inferior way, but the so-called Goodyear machinery imitates the hand-sewed shoe, — before this company was formed, when there were a number of shoe machinery manufacturing companies in the field, there was a certain royalty or rental charged for the use of the Goodyear machines; and in addition to that the companies charged a certain sum down. That is, they would say if you want to use one of these Goodyear machines which will make twenty or thirty times the number of shoes you could make without the use of it, you must give us part of the profit. Well, what do you want? We want for that machine $100 or $500 down, and we want so much per pair for the use of it. That is a fair proposition. That is what our patent laws contemplate. The inventor or owner of a patented machine cannot go to a manufacturer of shoes and charge him all that he makes out of the manufacture, but he is going to have some of it; that is, in other words, it is a slice for you and a slice for me, and we are each of us going to help the other. On that basis the cost of a set of Goodyear machinery fitted up for a manufacturer who was going to make 1,000 pairs of shoes a day — I have it here all itemized, item by item, machine by machine; these are matters of record published in 1899 — was $9,835. What is it to-day? Those same machines, $3,013. That is what this odious monopoly has done in a most important field, the manufacture of the sewed shoe, which is the great shoe to-day. The Brockton shoe, for example, is the shoe which Governor Douglas is

almost entirely making, and it is *the* shoe. It is the shoe that the great bulk of our people are wearing. Besides that there is the old-fashioned pegged shoe and the nailed shoe. But the sewed shoe is the Goodyear shoe. Before this company existed, when this business was split into half a dozen components, the manufacturer who wanted to put up a factory and make 1,000 pairs of shoes a day was encountered with the proposition: You pay us $9,835, we will give you this set of machinery, some twenty different machines through which the shoes pass, then pay us so much a pair on the shoes and go ahead and start your factory. They were glad to do it. It was not an unreasonable proposition. But this company at the end of six or seven years has reduced that $9,835 to $3,013.50.

No manufacturer has come in here and charged this company with treating the big manufacturer any more favorably than the small one. The fact is this, that any honest, intelligent foreman in Governor Douglas' factory or anybody's else factory who comes to this company and says: Gentlemen, I have not got much money, I know how to make a shoe, I have a good character, I have got some good friends, I want to start a factory and make 1,000 pairs of Goodyear shoes a day, — he will get from this company his machines absolutely on the same basis as the richest and most prosperous shoe manufacturer in the entire universe. That is an important thing, a very important thing. And this company can give you a long list of young men who started in business in that way. They never have allowed credit, millions of dollars of capital, any influence of any sort or kind to give the big and rich manufacturer one iota of chance or benefit over the small manufacturer. Now, that is only one of the odious ways of this odious monopoly.

Rep. Phelan. Might it not be better not to allow too many small manufacturers to go into the business? Then there would be one monopoly of the shoe business and prices would be cheaper.

Mr. Storrow. Well, it has not seemed so to us. Of course the Legislature might pass a law and say that no new man should start in the manufacture of shoes, but we had not thought of coming here and asking for it. We on the whole

supposed — although there are two sides to every question — that ours was the fairest position for us to take, and we have always taken it, although we have met with some substantial opposition; and I believe, gentlemen, if the history were stated, of which they are not aware, it would be found that these gentlemen are here because a rich one of these shoe manufacturers came one day to the company and wanted a concession because he said he was very rich and he was making a great, big output of shoes, and he was entitled to some concession. He did not get it, and from that day to this that man has been on unfriendly terms with this company for that reason, and his name is generally mentioned as that of the big shoe manufacturer who is behind the appearance of these gentlemen here. Now, that is historically the way that grew up. I could give you the hour, the day and the date of that conversation.

You have also seen in the papers that another very large and important interest in this country proposes, it is talked about, to come up here and attack this company. I dare say they will. If our methods of doing business are unsound, we will fall, we will go down; but I do not believe they are. I believe the basis of our business is usefulness to the people who are serving, and that is the only basis on which we are working. I believe that is what we are doing. The exports have prospered, the manufacturers of shoes have prospered, the machinery is the best in the world, and I think you ought to go very slow; it is easy enough to be destructive, but it takes years to be constructive, to build up a large manufacturing industry.

REP. PHELAN. I would like to ask one other question, Mr. Storrow, for my own information, perhaps I ought to know, but I do not. You spoke about the prosperity of shoe manufacturers under this system.

MR. STORROW. Yes.

REP. PHELAN. What did you mean by that? Did you mean the system of leasing, ——

MR. STORROW. Yes.

REP. PHELAN. —— or did you mean leasing with a provision such as this bill seeks to reject?

Mr. Storrow. I meant under the general system of leasing shoe machinery to manufacturers of shoes at a price, so much per pair, which was started principally by Gordon McKay about 1860 or 1861.

Rep. Phelan. Well, anything that was in the leases of Gordon McKay, or anything that has been in the leases up to within the last few years, would not be at all interfered with by the passage of this bill, would it?

Mr. Storrow. Yes, sir, I think so.

Rep. Phelan. That is what I wanted to ask you, how?

Mr. Storrow. I will ask you to take it up with Mr. Brandeis, who, besides being a director of the company is also a lawyer, and can discuss it with you; but I know, I think I am sure he will tell you that that bill is aimed at every shoe machinery lease that has been put out for a generation.

Rep. Phelan. Another thing I wanted to ask you about was this: Speaking about furnishing machinery to shoe manufacturers you referred to the fact that the business had increased, and to the fact that the system could not have been a millstone around the shoe manufacturer's neck if it had increased.

Mr. Storrow. Yes.

Rep. Phelan. Of course if we assume that you control, or your company controls, the entire putting out of machinery, it is absolutely suicidal for you to adopt any policy whereby you are going to put their business to any disadvantage?

Mr. Storrow. Absolutely so, yes, sir. We consider that their prosperity and our own are bound together.

Senator Cox. Provided you could have a bill so as to prevent injurious competition, you can charge anything you like, and the shoe manufacturers would get it in the increased cost of shoes?

Mr. Storrow. Yes.

Senator Cox. So the fact that they have been going ahead and doing a large business in this country at any rate is not absolute proof that there has not been an injury done to somebody by a monopoly of this kind?

Mr. Storrow. Well, sir, if you want evidence that this machinery has cheapened the cost of shoes, that is painted in

such large letters on every shoe factory in this country that you can see it forty miles off.

SENATOR COX. I do not know that I mean that.

MR. STORROW. The labor cost: have wages gone down? No, they have not, they have gone steadily up. Has the cost of making shoes gone down? Yes. Why? Because of the development and perfection of this machinery.

SENATOR COX. Well, has the price of shoes gone down?

MR. STORROW. No, sir, the price is slightly larger than it has been, but as a whole it has gone down.

SENATOR COX. Has the fact that these machines of yours are in use had anything to do with the increase in cost?

MR. STORROW. No, sir.

SENATOR COX. Are not there less men working to-day in the manufacture of shoes than when you put these machines in?

MR. STORROW. No, sir.

SENATOR COX. Are you sure of that?

MR. STORROW. Yes, sir. That is on account of putting in labor-saving machinery. Are there less people spinning cotton in this State to-day than if they had continued the original method of making yarn by hand?

SENATOR COX. There are less people spinning per pound of yarn.

MR. STORROW. That is perfectly true.

SENATOR COX. Now, in this case I mean per pair of shoes.

MR. STORROW. Oh, undoubtedly, if you made all these shoes by hand. I suppose if you made the shoes by hand in Massachusetts, every single person in Massachusetts would have to be making shoes, and then you could not get them all made.

SENATOR COX. Well, Mr. Storrow, it is generally conceded, is it not, that the machines you put out are the best?

MR. STORROW. I think so, yes.

SENATOR COX. Why are not you willing, having the best article, to go out into the market, to do away with this clause in your lease and give other people a show? The public will buy your article if it remains the best and the price is satisfactory, will they not? That is a foregone conclusion, is it not?

MR. STORROW. I should not say so, no, sir.

SENATOR COX. That is what we try to do in the ordinary walks of life.

MR. STORROW. I would like to tell you the other side of that in this case.

SENATOR COX. Just one other question. You said legislation along this line might ruin the company.

MR. STORROW. Yes.

SENATOR COX. Gordon McKay and others amassed fortunes when they were independent makers?

MR. STORROW. No, sir, Gordon McKay was the father of the leasing system.

SENATOR COX. He amassed a large fortune?

MR. STORROW. Yes; and he contributed more to the prosperity of this industry in this State than any other forty men that ever lived.

SENATOR COX. Did not they, the makers of machinery, before the combination, make money?

MR. STORROW. Other makers of machinery before this combination? Yes.

SENATOR COX. Now, you are making money to-day, too?

MR. STORROW. Yes.

SENATOR COX. Why are not you satisfied to make a reasonable profit and let somebody else make some?

MR. STORROW. I have endeavored to show you that we have been putting the price down. We have not put the price up any since we were created.

SENATOR COX. I understand that.

MR. STORROW. What is your proposition, that we should cut our royalties in halves again?

SENATOR COX. No. My question is why are not you willing to go into the market with the best thing that is on the market and give everybody else the same opportunity that you have? You have got the best machine, and when you say to a man: Here, you shall not use any other machine if you are going to use mine, you virtually stifle competition, don't you?

MR. STORROW. Go into the market in what way? You mean to sell outright?

SENATOR COX. Yes, or to lease.

MR. STORROW. Which do you mean?

SENATOR COX. Well, you lease your machinery and sell?

MR. STORROW. Yes.

SENATOR COX. When you lease a man machinery, you say: If you want to have this machinery at your place, you must——

MR. STORROW. I was not sure that I understood you. Do you think it is our duty to sell our machines outside?

SENATOR COX. No, you do not have to sell anything unless you want to. My question is why do not you lease your machinery, charge your price for it, and let it go at that, in plain English.

MR. STORROW. The reason for that is this broadly, and this is the way the business has grown up. A shoe — I am not an expert and cannot tell you all, but I presume a shoe going through a factory goes through fifty different machines, one after the other. The result you get is not the result of one machine, it is the result of fifty different steps taken on different machines. We hold ourselves responsible for that result, the shoe which is arrived at at the end of those steps. Our inspectors constantly go through the factories, and if a machine is not operating right, or if the operator is not operating it right, if the results that the manufacturer gets are deficient, we tell him so, and we hold ourselves responsible for that result. In that way we are constantly raising the standard of shoe. If at any point on the line it was possible to interject other machines, if forty-nine out of fifty were not ours, if twenty-five out of fifty were not ours, if ten were not ours, we could not be held responsible for the result, we could not have this system of inspection. And we think it would be a detriment. We are selfish, of course, but we honestly believe it would be a detriment to the shoe manufacturers in Massachusetts and hurt them in the end, and the export business, instead of growing as it has done, would not be more than a fraction of what it is now.

SENATOR COX. The whole thing comes down to this, don't it, that every factory that has your machines is working for you?

MR. STORROW. Well, I supposed they were working for themselves.

SENATOR COX. Your theory, your scheme or plan is to make them work for you?

Mr. Storrow. Our scheme is this: to make ourselves so useful to the user of the machines that we have that they will want to ride in our wagon. If we cannot make ourselves useful in the long run, we are going to go down and out. And a part of the necessary utility is that we shall be responsible for the result arrived at in the factory, and we so hold ourselves.

Senator Cox. I personally agree if you continue to put out the best machines on the market, you are not going to be hurt a bit by being prevented from excluding other people. If you are going to start at the bottom and go right up and finish that shoe from the bottom, and you have the machines for every process, and they are the best machines there are, the shoe people are going to continue to use those machines until somebody can do something better, or until the price goes down.

Mr. Storrow. Sometimes it may be a question of method; it may be a question of inspection; it may be a question of watching the operators, keeping the machines keyed up; and here is something that happens: Abroad it has been particularly true that the shoe manufacturers have bought their machines. Has that benefited those manufacturers? I do not think so. Their shoes are notably inferior to ours in style, they are notably inferior to ours as far as economy of production is concerned. The thing has been tried. We have watched it, and we do not believe that is the way to make ourselves useful to the shoe manufacturers, and that is what we get our money for; we can make ourselves more useful to them by holding ourselves responsible for that shoe; and we cannot hold ourselves responsible if it is going to pass through all sorts of different machines which may be in order or out of order, where the operator cannot be watched and cautioned.

Rep. Phelan. Here is a question I would like to ask. Suppose you have got one kind of a machine which is absolutely essential to the shoe business, which is far superior to any machine made for the same purpose; if you have that one machine and then make a lease and refuse to sell a man that machine unless he takes all of your machines, it is practically impossible for him to do business without you?

Mr. Storrow. Mr. Brandeis says he will answer that question.

REP. PHELAN. Yes. I am simply looking for information.

MR. STORROW. On the technical question of the lease, Mr. Brandeis is better informed than I am. Perhaps you will postpone that question?

REP. PHELAN. Yes, I will. You said that we can pass legislation if we desire; ——

MR. STORROW. You can, certainly. Destruction is easy and short, construction takes time.

REP. PHELAN. What I want to ask you in regard to that is this: What part of the shoe business do your machines cover? I refer to the Shoe Machinery Company.

MR. STORROW. Why, they cover not the cutting out of the leather, not the stitching of the upper, the light part, but all the rest of the machinery for the shoe.

REP. PHELAN. There are a great many machines used in stitching?

MR. STORROW. The stitching room this company does not go into.

REP. PHELAN. But machines are used in the stitching room, are they not?

MR. STORROW. I think it is a very simple process, it is simply the stitching of two pieces of cloth or leather together.

REP. PHELAN. There are some very complex machines used in stitching?

MR. STORROW. Undoubtedly, but the practical operation of stitching the uppers together by the use of a machine has been done for fifty years, while the successive operations in the other parts of the factory are of comparatively late development. For instance, the Goodyear machine, which is for this method of stitching soles to the shoe, went into use in about 1875 or 1878. Long before the War, they were stitching uppers practically as they are to-day.

REP. PHELAN. This is a thing that has been puzzling me. I have been puzzled to know why it is necessary for you to have this provision in your contract, and why it is not necessary for the Wheeler & Wilson Company or the Singer Company to have the same in theirs.

MR. STORROW. Their problem is nothing. It is stitching two pieces of cloth or leather together.

Rep. Phelan. Why is it different?

Mr. Storrow. We are performing a long series of steps, — I would be glad to hand this in to you on a piece of paper, — I suppose forty or fifty different operations; it is the lasting of the shoe, it is the sewing on of the welt, it is the channelling of the sole, it is putting the shoe to the sole.

Rep. Phelan. I do not know but you have stated it exactly, but the impression I got was this, that one reason why you put that provision in is because you know what your machines will do, and you want to continue the system on the basis of rentals?

Mr. Storrow. Yes, sir, that is the idea.

Rep. Phelan. And you do not want any other machine —

Mr. Storrow. —— interjected.

Rep. Phelan. —— to come in after or between which might interfere with the work?

Mr. Storrow. True, true.

Rep. Phelan. That is the reason why you want this provision in?

Mr. Storrow. I should say that was the principal reason or the chief reason.

Rep. Phelan. You do not think that applies to stitching shoes?

Mr. Storrow. No, sir, I do not, not as I understand it.

The Chairman. Mr. Storrow, do I understand you to say that the passage of this bill would wipe you out?

Mr. Storrow. I think it would be a very serious menace indeed, Mr. Lowell. A further matter, one I came here to lay before your committee, and I must say, personally, I resent it somewhat, and that is the way that the directors of this company have been talked about in the newspapers and talked about here, called offenders. I want to say that so far as I am aware we are Massachusetts business men trying to build up this industry.

Rep. O'Connell. Mr. Storrow, you give quite a liberal discount, do you not, for the payment of rentals ?

Mr. Storrow. It has always been the system in effect, which is all that it amounts to, sir, to have the rentals paid when due. That was established as far back as in the early '60s.

Rep. O'Connell. I did not understand the relation of the discount.

Mr. Storrow. It simply means that the manufacturer must pay his rental when it is due.

Rep. Phelan. One other thing, Mr. Storrow. You spoke about the small shoe manufacturer.

Mr. Storrow. Yes.

Rep. Phelan. As a matter of fact, the system under which you do business is an advantage to the poor man?

Mr. Storrow. We believe so.

Rep. Phelan. He can get in?

Mr. Storrow. He can. We have helped many a one with good character.

Rep. Phelan. I also will ask this — this discussion came up last year, I do not know whether you were here or not.

Mr. Storrow. No, sir, I was not here.

Rep. Phelan. I wanted to know whether there had been any opposition from shoe manufacturers on the ground that they had been unfairly treated.

Mr. Storrow. I believe that the general testimony of the shoe manufacturers of this country as a whole — there is always somebody probably, who will complain about anything, but I believe 97 per cent of the shoe manufacturers of this country would say that this company was performing its work well and efficiently and was of great service to them, had not put up the price of anything, but had put down a considerable number of prices, and, gentlemen, that it was absolutely the only thing going into the manufacture of shoes that has not gone up in the last few years. Take leather, take thread, take any article that goes into a shoe, there is not a thing that goes into the manufacture of a shoe that has not advanced constantly, that is a matter of common knowledge. Not so with this company, its prices have gone down, while the price of everything else has been going up.

Rep. Phelan. I will say one thing further in regard to that. Apart from any disposition to be unfair, any consideration of that at all, as a matter of business policy it is your best business policy to try to treat every shoe manufacturer alike?

Mr. Storrow. Absolutely.

Rep. Phelan. To have the least competition in the shoe business?

Mr. Storrow. Well, I do not know about that, but we have felt that the moment we began to treat one manufacturer different from another we would lose their confidence.

Rep. Phelan. Would not it be for the present your best policy to have competition in the shoe business for this reason: there are many reasons advanced favoring monopolies, on the ground it means a lessening in the expense, on the old familiar argument that one management, putting all things under one head, lessens the number of men who do the work, and if you are to have the monopoly of the shoe business, of course there must be less machinery and less expense.

Mr. Storrow. It is pretty difficult to answer that question. The number of shoes would be the same, and if we get the same apparent profit, if you scatter the business around among thousands it is a great deal more expensive for us to do the business.

Rep. Phelan. Here is what I am coming at: We will assume what quite likely is the fact that all manufacturers are given a fair show by your company, and then you will acknowledge this, that if the company continues and becomes practically the only company furnishing shoe machinery to these concerns, it is within the power of the company to create a monopoly of the shoe business by indirection.

Mr. Storrow. Well, I suppose broadly speaking that is true, but the men who started in to do that would just as surely cut off their own heads, in my opinion, as possible. It would be a very short-sighted policy. Take the matter of transportation and the charge of half a cent per ton per mile, if the New York, New Haven & Hartford Railroad started to-morrow and charged ten cents per mile, they might do it for a while, but there would come an end to it.

Mr. Chairman, I am through, with the exception of referring to one point which is brought out by a question a gentleman asked me. I have a little pamphlet entitled, "The Manufacturers' Position," not prepared by me, it bears the name of the Thomas G. Plant Company, whose name is connected in some way with the desire to manufacture shoe machinery. Mr.

Plant in this book is arguing that the cost of making shoes has risen, and that he is entitled to raise the price to his consumers. I think that is probably true. He gives us a table of some ten things that go to make a boot or shoe, — upper stock, sole leather, inner sole, heel, toplift, welt, royalty, counter, lining, trimmings, labor, findings and manufacturing expense. I think every single one of those items has gone up in the last twelve months except two, one which he calls manufacturing expense, which is chiefly due to the use of our machines, to the labor, the other is royalty, which is the same. He makes out that the average cost of a shoe has gone up from $2.17 to $2.55. That is not evidence manufactured by us, that is evidence manufactured by a gentleman who is paying these rentals. I have prepared as a matter of fact some figures that time is too short to give you, perhaps, showing much more in detail that from 1898 to 1904 every single item that relates to the manufacture of a shoe, except the rental paid for the use of the machinery, has gone up and gone up very substantially. One manufacturer gave us the prices he paid for everything that he used in his factory in 1898 and 1904 in the manufacture of McKay shoes. His cost has gone up 34 per cent; another manufacturer's, 35 per cent; another, 44 per cent; another, 35 per cent; another, a manufacturer of fine shoes, 19 per cent.

Rep. O'Connell. I understand you to state that the cost of shoes, so far as the work of your machines is concerned, has not increased any?

Mr. Storrow. On the contrary, it has gone down.

Rep. O'Connell. What do you say as to the probability of further reduction if competition had been permitted?

Mr. Storrow. You mean if this leasing system is broken down? I think the immediate short-sighted effect would be to reduce the royalty, but the eventual effect would be to break up this system and scatter the business of the manufacturer of shoe machinery to all parts of the world; it will have to go to Paris, to Frankfort, to Leicester, England, to Montreal; and neither the shoe manufacturers nor the industry as a whole would be benefited, but both would be seriously injured, in my opinion; and the proof of that is that it is under this system that the business has prospered so amazingly. And

before you proceed to act on the contrary of that proposition, there should be some careful investigation which I do not think these gentlemen are fully informed about.

THE CHAIRMAN. Does any other gentleman appear in remonstrance? Mr. Brandeis, we will hear you until ten minutes of one. We shall have to stop then.

Mr. BRANDEIS to Hon. JAMES A. LOWELL

MEMORANDUM PREPARED BY LOUIS D. BRANDEIS FOR THE JUDICIARY COMMITTEE OF THE MASSACHUSETTS LEGISLATURE, APRIL, 1906

April 25, 1906.

Hon. James A. Lowell,
House Chairman, Judiciary Committee,
State House, Boston, Mass.

Dear Sir: In submitting the authorities referred to in my remarks before your committee on April 18 on house bill No. 472, it may be serviceable to the committee to have me state briefly a few facts concerning the leasing methods of the United Shoe Machinery Company, as others have made statements in relation thereto which were not correct.

It is not true that a shoe manufacturer can not get any of the United Shoe Machinery Company's machines if it takes any competing machines of other shoe-machinery manufacturers. The facts are these:

The machines manufactured and put out by the United company may be divided broadly into two classes, namely, special department machines, of which there are 102, and general department machines, of which there are 117.

The special department machines, of which the Goodyear welter and stitcher, the lasting, and metallic fastening machines are examples, are the important machines, on which the business of the company rests, and which the company considers its specialty. Substantially all of these 102 machines embody one or more inventions covered either by unexpired patents or by pending applications owned or controlled by the company. The aggregate number of such inventions

owned or controlled by it is 1,713. These special department machines are leased only — that is, none of them are sold. Some of the special department leases limit the lessee to the use of the machine in connection with other special department machines. Other of the special department leases permit the machine to be used in connection with any other machine in the market. In some cases, as with the metallic machines, two distinct forms of leases are offered, the ordinary lease and the independent lease. Under one of the ordinary forms of lease the lessee is limited to the use of the machine in connection with other special department machines. Under the independent lease the lessee is free to use the machine with any other machines in the market; but the independent lease requires of the lessee a royalty 10 per cent higher than the ordinary form lease. The provisions in leases vary also according to whether the lessee makes an initial premium payment, as $300 in some Goodyear leases, or pays only royalty. No special department lease requires the lessee to use the machine in connection with any general department machine.

Of the general department machines each performs some step in the manufacture of footwear for which competing machines are on the market. Of these 117 machines in the general department only 36 are patented. Any of these 117 machines may be either purchased of the company at substantially the same price as the company's competitors charge for similar machines, or it may be leased. If any general department machine is purchased it may be used in connection with any other machine whatsoever employed in shoe manufacturing. If, on the other hand, it is leased, the lessee is limited to use it in connection with special department machines leased from the company. Most manufacturers prefer to lease general department machines, because thereby they obtain the use of these machines at a less cost than if they purchased them.

The inaccuracy of the sweeping statement that a shoe manufacturer is prevented by the terms of each United company's lease from using any machine of a competitor is well illustrated by the facts in regard to the Goodyear welter and stitcher.

In the process of making Goodyear welt shoes, which are

the ordinary $3.50, $4, or $5 shoes sold by Douglas or Hanan, the shoe manufacturer uses generally, besides the welter and stitcher, 58 distinct machines, which the shoe manufacturer can obtain from the United company, besides others in which the company does not deal. The welter attaches the inner sole to the upper and welt. The stitcher attaches the outer sole to the welt. These are fundamental machines in the Goodyear welt system, and the lessee of a welter may not use a competing stitcher, nor the lessee of a stitcher a competing welter, but as to the other 58 machines used in connection with a stitcher and welter in the manufacture of a Goodyear shoe, the shoe manufacturer has the absolute liberty either to purchase or lease any or all of them from any other machinery manufacturers who make similar machines. If he takes from the United company any one or all of these 58 machines, it is not because he is obliged to do so in order to get the stitcher and the welter, but because the terms which the United company makes for them is so much more favorable than other shoe machinery manufacturers, or the machine which it furnishes is so much better than that furnished by other shoe manufacturers, or the care and attention which he gets from the company's road men is so much better than that of any other manufacturer, that he finds it to his advantage to use the United company's machines.

The authorities to which I referred as showing that the State did not have the constitutional power to interfere, as House bill No. 472 proposes, with the terms on which patented machines are sold or leased were: Bement *v.* National Harrow Co. (186 U. S., 70, 91); Heaton Peninsular Co. *v.* Eureka Specialty Co. (47 U. S., App. 146, 160).

The only permissible State regulation of the sale and use of patented property is that required to protect the public health, morals, or safety.

The cases to which I referred as showing that the method of doing business is not illegal because it provides special inducements with a view to securing the whole business of the customer, and hence in a popular sense tends to a monopoly, are: Whitwell *v.* Continental Tobacco Co. (125 Fed. Rep., 104–115); In re Greene (52 Fed. Rep., 104).

The case of O'Keefe *v.* Somerville (S. J. C. Mass., Jan 3, 1906), in Banker and Tradesman of January 13, 1906, a trading-stamp case, shows that under our own constitution the right to abridge freedom of contract is limited to such regulation as the public safety, public health, and public morals demand.

I enclose a memorandum containing a few quotations from the cases referred to, which may possibly be of convenience to the committee.

Yours, very truly,

LOUIS D. BRANDEIS.

In Bement *v.* National Harrow Co. (186 U. S., p. 91):

> "The general rule is absolutely freedom in the use or sale of rights under the patent laws of the United States. The very object of these laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to the kind of property imposed by the patentee and agreed to by the licensee, for the right to manufacture, or use, or sell the article would be upheld by the courts. The fact that the conditions in the contracts keep up the monopoly or fix prices does not render them illegal."

In Heaton Peninsular Co. *v.* Eureka Specialty Co. (47 U. S. App. 146–160):

> "If he sees fit, he may reserve to himself the exclusive use of his invention or discovery. If he will neither use his device nor permit others to use it, he has but suppressed his own. That the grant is made upon the reasonable expectation that he will either put his invention to practical use or permit others to avail themselves of it upon reasonable terms is doubtless true. This expectation is based alone upon the supposition that the patentee's interest will induce him to use or to let others use his invention. The public has retained no other security to enforce such expectations. A suppression can endure but

for the life of a patent, and the discovery he has made will enable all to enjoy the fruit of his genius. His title is exclusive and so clearly within constitutional provisions in respect to private property that he is neither bound to use his discovery himself nor to permit others to use it."

In Whitwell *v.* Continental Tobacco Co. (125 F. R. 454), where the special privileges offered by the tobacco company to those who used its own products exclusively were sought to be made the basis of a proceeding under the anti-trust act, the court held the same legal, saying (p. 459):

"The right of each competitor to fix the prices of the commodities which he offers for sale and to dictate the terms upon which he will dispose of them is indispensable to the very existence of competition. Strike down or stipulate away that right, and competition is not only restricted, but destroyed. * * * (p. 460). The tobacco company and its competitors were not dealing in articles of prime necessity, like corn and coal, nor were they rendering public or quasi public service, like railroad and gas corporations. Each of them, therefore, had the right to refuse to sell its commodities at any price; each had the right to fix the prices at which it would dispose of them and to determine the terms upon which it would contract to sell them; each of them had the right to determine with what persons it would make its contracts of sale. There is nothing in the act of July 2, 1890, chapter 647 (the Sherman antitrust law), which deprived any of these competitors of these rights. If there had been, the law itself would have destroyed competition more effectually than any contracts or combinations of persons or of corporations could possibly have stifled it. The exercise of these undoubted rights is essential to the very existence of free competition, and, so long as they are exercised by any person or corporation, in no way deprives competitors of the same rights or restricts them in the use of these rights. It is difficult to perceive how their exercise can constitute any restriction upon competition or any restraint upon interstate trade. The acts of the defendant which are alleged by the complaint in this action to constitute an unlawful

restraint upon interstate commerce are nothing more than the unlawful exercise of these unquestioned rights, which are indispensable to the existence of competition or to the conduct of trade. The tobacco company and its employee fixed the prices of its commodities so high that the plaintiff could not profitably buy them. This was no restriction upon free competition, because it left the rivals of the company free to sell their competing commodities at any price which they elected to charge for them. It would have been no violation of the law under consideration if the tobacco company and its employee had combined to refuse to sell any of its commodities at any price and to retire from the business in which they were engaged entirely; much less could it be a violation of this act for them to fix their prices too high for profitable investment by the plaintiff. The tobacco company and its employee sold its products to customers who refrained from dealing in the goods of its competitors at prices which rendered their purchases profitable, but there was no restriction upon competition here, because their act left the rivals of the tobacco company free to sell their competing commodities to all other purchasers than those who bought of the defendants and free to compete for sales to the customers of the tobacco company by offering to them goods at lower prices or on better terms than they secured from that company. The tobacco company and its employee were not required, like competitors engaged in public or quasi public service, to sell to all applicants who sought to buy or to sell to all intending purchasers at the same prices. They had the right to select their customers, to sell and to refuse to sell to whomsoever they chose, and to fix different prices for sales of the same commodities to different persons. In the exercise of this right they selected those persons who would refrain from handling the goods of their competitors as their customers by selling their products to them at lower prices than they offered them to others. There was nothing in this selection nor in the means employed to affect it that was either illegal or immoral. It had no necessary effect to directly and substantially restrict free competition in any of the products of tobacco, because it in no way restricted the exercise of the rights of the competitors of the tobacco com-

pany to fix the prices of their goods and the terms of their sales of similar products according to the dictates of their respective wills."

In In re Greene (52 Fed. Rep., 104, 115) the rebate offered by the Distilling & Cattle Feeding Co. to those who dealt exclusively in its products, and which was the subject of the decision. There the rebate system was sought to be suppressed as tending to create a monopoly, but the court held otherwise, saying (p. 115):

"It is very certain that Congress could not and did not by this enactment attempt to prescribe limits to the acquisition, either by the private citizen or State corporation, of property which might become the subject of interstate commerce or declare that when the accumulation or control of property by legitimate means and lawful methods reached such magnitude or proportions as enabled the owner or owners to control the traffic therein or any part thereof among the States, a criminal offense was committed by such owner or owners. All persons, individually or in corporate organization, carrying on business vocations and enterprises involving the purchase, sale, or exchange of articles, or the production and manufacture of commodities which form the subject of commerce will in a popular sense monopolize both State and interstate traffic in such articles or commodities just in proportion as the owner's business is increased, enlarged, and developed. But the magnitude of a party's business, production, or manufacture, with the incidental and indirect powers thereby acquired and with the purpose of regulating prices and controlling interstate traffic in the articles or commodities forming the subject of such business, production, or manufacture, is not monopoly or attempt to monopolize which the statute condemns.

"A monopoly in the prohibited sense involves the element of an exclusive privilege or grant which restrains others from the exercise of a right or liberty which they had before the monopoly was secured. * * * The arrangement relied on, considered either in detail or as a whole, involved no 'attempt to monopolize any part of the trade or commerce

among the States.' The rebate promised, upon condition of exclusive purchases and not underselling the vendor's distributing agents, was a legitimate method of inducing trade, but the means thus employed in no way operated to prevent or restrain others from offering the same or greater inducements."

In O'Keefe *v.* Somerville, decided January 3, 1906, where a trading-stamp act (Stat. 1904, ch. 403) was held to be unconstitutional. There the court said:

"One of the reasons why these methods are allowable is found in the familiar principle that constitutional liberty means the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade. The restrictions upon conduct which may be imposed in the exercise of the police power include everything that may be necessary in the interests of the public health, the public safety, or the public morals, and they include nothing more. * * *"

MR. BRANDEIS WRITES A LETTER

THE FOLLOWING LETTER FROM LOUIS D. BRANDEIS COMMENDING THE UNITED SHOE MACHINERY COMPANY AS MORALLY UNOBJECTIONABLE, WAS WRITTEN A FEW WEEKS BEFORE HIS RESIGNATION FROM THE DIRECTORATE OF THE COMPANY

161 Devonshire Street, Boston, Mass.,
October 5, 1906.

Erving Winslow, Esq.,
20 Central Street, Boston, Mass.

My Dear Sir: I have your letter of the 4th, in which you say:

> "I have a friend who possesses the unusual quality of extending moral scruples about social questions to his private business interests. Advice has been given to make an investment in the securities of the United Shoe Company, but he has been told that this company, practically controlling the essential shoe machinery, leases it to manufacturers and refuses them permission to make use of any inventions in shoe machinery which do not infringe in the least upon those which they control, under threat of revoking the leases of their own machines."

I should be glad to know who your friend is and who made to him the statement in regard to the United Shoe Company's method of doing business, because that statement grossly misrepresents the facts.

Inasmuch as you, as well as your friend, appear to be interested in ascertaining the facts, I will give you the result of the special inquiry which I made into the subject last spring:

The machines manufactured and put out by the United Shoe Company may be divided broadly into two classes, namely: Special department machines, of which there are 102, and general department machines, of which there are 117.

The special department machines, of which the Goodyear welter and stitcher, the lasting and metallic fastening machines are examples, are the important machines on which the business of the company rests, and which the company considers its specialty. Substantially, all of these 102 machines embody one or more inventions covered either by unexpired patents or by pending applications owned or controlled by the company. The aggregate number of such inventions owned or controlled by it is 1,713. These special department machines are leased only — that is, none of them are sold. Some of the special department leases limit the lessee to the use of the machines in connection with other special department machines.

Other of the special department leases permit the machine to be used in connection with any other machine in the market. In some cases, as with the metallic machines, two distinct forms of leases are offered — the ordinary lease and the independent lease.

Under one of the ordinary forms of lease, the lessee is limited to the use of the machine in connection with other special department machines. Under the independent lease the lessee is free to use the machine with any other machines in the market; but the independent lease requires of the lessee a royalty 10 per cent higher than the ordinary form lease. The provisions in leases vary also according to whether the lessee makes an initial premium payment, as $300 in some Goodyear leases, or pays only royalty. No special department lease requires the lessee to use the machine in connection with any general department machine.

Of the general department machines each performs some step in the manufacture of footwear for which competing machines are on the market. Of these 117 machines in the general department only 36 are patented. Any of these 117 machines may be either purchased of the company at sub-

stantially the same price as the company's competitors charge for similar machines, or it may be leased.

If any general department machine is purchased, it may be used in connection with any other machine whatsoever employed in shoe manufacturing. If, on the other hand, it is leased, the lessee is limited to use it in connection with special department machines leased from the company. Most manufacturers prefer to lease general department machines, because thereby they obtain the use of these machines at a less cost than if they purchase them.

The gross inaccuracy of the sweeping statement that a shoe manufacturer is prevented by the terms of each United company's lease from using any machine of a competitor is well illustrated by the facts in regard to the Goodyear welter and stitcher.

In the process of making Goodyear welt shoes, which are the ordinary $3.50, $4, or $5 shoes sold by Douglas or Hanan, the shoe manufacturer uses generally, besides the welter and stitcher, 58 distinct machines, which the shoe manufacturer can obtain from the United Shoe Company, besides others in which the United Shoe Company does not deal. The welter attaches the inner sole to the upper and welt. The stitcher attaches the outer sole to the welt.

These are fundamental machines in the Goodyear welt system, and the lessee of a welter may not use a competing stitcher, nor the lessee of a stitcher a competing welter, but as to the other 58 machines used in connection with a stitcher and welter in the manufacture of a Goodyear shoe, the shoe manufacturer has the absolute liberty either to purchase or lease any or all of them from any other machinery manufacturers who make similar machines.

If he takes from the United company any one or all of these 58 machines, it is not because he is obliged to do so in order to get the stitcher and the welter, but because the terms which the United company makes for them are so much more favorable than other shoe machinery manufacturers, or the machine which it furnishes is so much better than that furnished by other shoe manufacturers, or the care and attention which he gets from the company's road men is so much

better than that of any other manufacturer, that he finds it to his advantage to use the United company's machines.

If your friend considers, upon the facts above stated, that there is anything morally objectionable in the methods of doing business adopted by the United Shoe Machinery Company (which I do not), it seems to me clear that he ought not to invest in United Shoe Machinery stock.

I am sorry to note that you consider the quality of "extending moral scruples about social questions" to "private business interests" so unusual.

Awaiting your reply, yours, very truly,

LOUIS D. BRANDEIS.

DOUBLE-DEALING UNEXPLAINED

MISREPRESENTATIONS IN MR. BRANDEIS' LATEST STATEMENT—"HE WHO EXCUSES HIMSELF, ACCUSES HIMSELF"

BOSTON, MASS., Feb. 29, 1912.

Hon. MOSES E. CLAPP,
Chairman, Senate Committee on Interstate Commerce,
Washington, D.C.

MY DEAR SIR: Mr. Louis D. Brandeis has caused to be published in the "Boston American" a three-column explanation of his change of front with reference to the United Shoe Machinery Company, in the form of a letter addressed to you. Like other gentlemen who have changed their attitude when they thought if for their interest to do so, Mr. Brandeis' actions need a good deal of explanation. I desire to point out to you a few respects in which some of his explanations do not explain:

He says in his "eighth" explanation that he ceased to act as counsel for the Company five months before June 1, 1907. Mr. Brandeis' firm after that date, to wit: May 1, 1907, July 1, 1907, January 1, 1908, and November 1, 1909, rendered bills aggregating $1,000 for professional services and disbursements in our matters, which have been paid by the Company, and which payments have never been to my knowledge returned by Mr. Brandeis.

He says in his "first" explanation that although he regarded the United Shoe Machinery Company as a good trust in April, 1906, and that he then regarded the bill before the Massachusetts Legislature as unconstitutional, he saw light when the United States Supreme Court decided C., B. & Q. R. R. Co. v. Drainage Commission, 200 U. S., 592. This case was

decided March 5, 1906, almost two months before Mr. Brandeis went before the Legislature at all.

He says in his "sixth" explanation that the decision of the United States Supreme Court in Continental Wall Paper Company *v.* Voight, 212 U. S., 227, led him to believe that the leases which he had before believed to be valid would be invalid under the Sherman law, and he wishes you to note with emphasis that this case was decided February 1, 1909; but it had already been decided in exactly the same way on January 5, 1906, by a unanimous opinion of the Circuit Court of Appeals, written by Mr. Justice Lurton, now of the Supreme Court, and Mr. Brandeis must have known of that decision when he argued before the Massachusetts Legislature in April of that year.

The fact is that there is not the slightest resemblance between the Continental Wall Paper case and the case of the United Shoe Machinery Company and Mr. Brandeis well recognized it because he argued for and sustained the leases of the United Shoe Machinery Company upon the ground that they covered patented articles, with which the Wall Paper case had nothing to do. A lawyer of your learning and acumen will not be deceived by this subterfuge.

Mr. Brandeis says in his "third" explanation that in the fall of 1906 he ascertained "facts" in addition to those previously furnished him to some extent inconsistent with statements before made which "raised serious doubt" in his mind as to the soundness of the general policy of the Company and the propriety of some of their methods. What were these "facts"? Why did they "raise serious doubt" in his mind? Evidently no change of opinion had occurred at the time Mr. Brandeis wrote his letter to Mr. Erving Winslow, October 5, 1906, when he upheld the legal and moral soundness of the Company's business policy. His letter of resignation, dated December 6, 1906, of which I attach a copy, discloses no uneasiness in Mr. Brandeis' mind as to the soundness of the Company's policy or the propriety of its methods.

In spite of the fact that Mr. Brandeis says he viewed with alarm the acquisition of the property of Thomas G. Plant, in September, 1910, and regarded it as a deliberate and flagrant

violation of the law, he continued to retain his interest and his stock in the United Shoe Machinery Company until July 1, 1911, when, after he had accepted professional employment from certain shoe manufacturers calling themselves the "Western Alliance", who have been engaged in opposing this Company, he proceeded to publicly attack his former client. The "informal talk" to which he refers in his "ninth" explanation was a part of the same campaign.

He says that "most important of all" Mr. Plant was purposing to put his system of machinery on the market "at a cost to the manufacturer far below that charged by the Shoe Machinery Trust." Nobody knows better than Mr. Brandeis that this is not true; for as counsel for parties in interest he must have been aware that Mr. Plant did not intend to put his machines on the general market, but was looking for a sale in block to some of Mr. Brandeis' clients with a view of forcing the purchase finally upon this Company. He knows also the falsity of his assertions that "the United Shoe Machinery Company declared that the shoe manufacturers would be precluded from using the Plant system by the provisions of their leases with the Shoe Machinery Company." The Company never declared anything of the kind.

Mr. Brandeis' statement of July 12, 1911, which he filed with your Committee, contains assertions which are not confirmed by the facts. That statement was nothing more nor less than an endeavor at a very late date to justify a change of attitude which has always been unjustifiable.

At his first appearance before the Committee of which you are Chairman Mr. Brandeis made some charges to the effect that the United Shoe Machinery Company prevented Thomas G. Plant from obtaining credit. That statement, which I challenged him to produce proof of, he never substantiated and now weakly disclaims responsibility for. I do not regard it as worthy of your notice to discuss irresponsible newspaper rumors.

Very sincerely yours,

S. W. WINSLOW,
President.

161 Devonshire Street, Boston, Mass.,

Dec. 6, 1906.

Sidney W. Winslow, Esq.,

President, United Shoe Machinery Co.,

Albany Bldg., Boston, Mass.

My Dear Mr. Winslow: The receipt of the notices of the quarterly meeting of the United Shoe Machinery Company, and of the United Shoe Machinery Corporation on December 12th, which have just reached me, remind me to send in my resignation as Director in both companies.

You will recall that I became a Director of the Company, as I had previously become a Director of the McKay Shoe Machinery Company at Mr. Matz' request in order to represent the large interests of the Henderson family, Mr. Matz being of the opinion that they should have a representative on the spot.

The established success of the Company convinced me long since that the Henderson family did not need such representation, and when I last saw Mr. Matz he agreed with me.

My own interest in the Company is so insignificant as not to justify any representation on the board:— indeed I hold no common stock except as the result of rights which went with the Preferred. I feel, therefore, that I ought not to continue an exception to my general rule of not holding the office of Director in any corporation for which I act as counsel.

I enclose my resignation in both the Company and the Corporation, which kindly present at the coming meetings.

Yours very truly,

Louis D. Brandeis.

Dec. 6, 1906.

SIDNEY W. WINSLOW, ESQ.,
President, United Shoe Machinery Corporation,
Albany Building, Boston, Mass.

MY DEAR MR. WINSLOW: I hereby tender my resignation as Director in the United Shoe Machinery Corporation, to take effect immediately.

Yours very truly,

LOUIS D. BRANDEIS.

Dec. 6, 1906.

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